



STATE BOARD OF EQUALIZATION STAFF LEGISLATIVE BILL ANALYSIS

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| Date Amended: | 08/10/06 | Bill No: | AB 1418 |
| Tax: | Sales and Use | Author: | J. Horton |
| Related Bills: | | | |

BILL SUMMARY

This bill would require the Board, after providing a 30-day advance written notification to taxpayers, to make available as a matter of public record, a quarterly list of the top 250 delinquent sales and use taxpayers in excess of \$100,000, as specified. The bill contains similar provisions for tax delinquents falling under the purview of the Franchise Tax Board.

Summary of Amendments

The amendments to this bill since the prior analysis make several clarifying changes, including an amendment to delete the requirement that a return receipt is required for the preliminary notice to the person liable for the tax. Instead, the amendments specify that the preliminary notice shall be provided to the person by certified mail, return receipt requested, and that if, within 30 days of the issuance of the notice, the person does not remit the amount due, or make arrangements for payment of the amount due, the tax delinquency shall be included on the list. Also, the amendments specify that, a person shall be added back to the list of delinquencies without providing preliminary notice if that person fails to comply with the terms of the arranged resolution.

ANALYSIS

Current Law

Under existing law, Section 7056 of the Sales and Use Tax Law prohibits the Board to make known in any manner whatever, the business affairs, operations, or any other information pertaining to any retailer or any other person required to report to the Board or pay a sales and use tax. However, some exceptions exist in current law where confidential tax information is released to the public. For example, an exception exists under the settlement provisions of Section 7093.5 where the Board settles tax matters in dispute that are the subject of protests, appeals or refund claims. The law requires that a public record be made with respect to a settlement whenever a reduction in tax in excess of \$500 is approved. The public record must include, among other things, the name of the taxpayer, the total amount in dispute, and the amount agreed to pursuant to the settlement. Another exception includes cases where a taxpayer is delinquent in his or her tax obligations and the Board files a lien. The recording of the tax lien pursuant to Section 6757 establishes a public record of the existence of the lien against all property belonging to the taxpayer and located in this state.

This staff analysis is provided to address various administrative, cost, revenue and policy issues; it is not to be construed to reflect or suggest the Board's formal position.

Proposed Law

This bill would add Article 1.5 (commencing with Section 7063) to Chapter 8 of the Sales and Use Tax Law to require the Board to make available as a matter of public record each quarter, a list of the 250 largest sales and use tax delinquencies in excess of \$100,000. A delinquency is described in the bill as an amount of tax that has been either determined by the Board or self assessed by the taxpayer and that is delinquent for more than 90 days for which a state tax lien has been filed, but would not include:

- Any delinquency that is under litigation in a court of law;
- Any delinquency for which suitable payment arrangements have been made with the Board; or
- Any delinquency for which the taxpayer has filed bankruptcy.

Prior to making a tax delinquency a matter of public record, however, the bill would require the Board to provide a preliminary written notice by certified mail, return receipt requested, to the person or persons held liable for the tax. If within 30 days of issuance of that written notice, the person or persons do not either remit the amount due, or otherwise make arrangements with the Board for payment of the amount due, the tax delinquency would be required to be included on the list.

The bill would specify that the quarterly list include:

- The telephone number and address of the Board office to contact if a person believes placement of his or her name on the list is in error.
- The aggregate number of persons that have appeared on the list who have satisfied their delinquencies in their entirety and the dollar amounts, in the aggregate, that have been paid attributable to those delinquencies.

The bill would require the Board to remove any delinquencies from the list, as promptly as feasible, but no later than five business days, if any of the following occur:

- The person liable for the tax has contacted the Board and resolution of the delinquency is or has been arranged.
- The Board has verified that an active bankruptcy proceeding has been initiated.
- The Board has verified that a bankruptcy proceeding has been completed and there are no assets available with which to pay the delinquent amount.
- The Board has determined that the delinquency is uncollectible.

The bill would further specify that any person whose delinquency appears on the quarterly list, and who satisfies that delinquency in whole, or in part, may request the Board to include in its quarterly list any payments the person made to satisfy the delinquency. Upon receipt of that request, the bill would specify that the Board shall include those payments on the list as promptly as feasible.

The bill would also provide that, a person whose delinquency appeared on the list and whose name has been removed because the person contacted the Board and arranged

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for resolution of the delinquency, the person shall be placed back on the list without preliminary notice if he or she fails to comply with the terms of the arranged resolution.

The bill would become operative January 1, 2007.

Background

From January 1, 2000 to January 1, 2005, similar provisions were in the Sales and Use Tax Law, as added by AB 790 (Honda, Stats. 1999, Ch. 443), except that bill limited the list to the top 12 delinquent taxpayers in excess of one million dollars. The Board sponsored that measure in an effort to induce taxpayers to clear their accounts with the Board. At that time, those 12 delinquent taxpayers owed the Board over \$52 million. However, the Board only collected from one account that appeared on the list, and the collection of that delinquent account was not attributable to the posting of the delinquency on the Internet. Instead, the collected amount (totaling \$1.7 million) was a result of the Board's other enforcement efforts.

Because the statute at that time was so limiting, it did not create an avenue to significantly reduce the past due delinquencies. Also, most of the taxpayers' businesses had been closed.

COMMENTS

1. **Sponsor and purpose.** This measure is sponsored by the Assembly Member Jerome Horton to serve as an inducement for delinquent sales and use taxpayers to clear their accounts with the Board and to reduce the Board's accounts receivables.
2. **The August 10, 2006 amendments** incorporate various clarifying changes, including an amendment to specify that a person whose delinquency appeared on the list and whose name has been removed because the person contacted the Board and arranged for resolution of the delinquency, shall be placed back on the list without preliminary notice if he or she fails to comply with the terms of the arranged resolution. **The August 7, 2006 amendments** deleted the requirement that a return receipt was required for the preliminary notice to the persons liable for the tax. Instead, the amendments specify that the preliminary notice shall be provided to the persons by certified mail, return receipt requested, and that if, within 30 days of the issuance of the notice, the person does not remit the amount due, or make arrangements for payment of the amount due, the tax delinquency shall be included on the list. The **January 23, 2006 amendments** made changes to the FTB-related provisions. The **January 4, 2006 amendments incorporated the Board's suggested amendments.** These amendments incorporated provisions to include within the group of taxpayers that may be included on the list those taxpayers that have delinquencies of self-assessed taxes. Without this amendment, any taxpayers that collected tax reimbursement and filed returns with the Board without payment of the tax would not have been placed on the list.

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The amendments also eliminated the requirement that would have required that the person receive tax or tax reimbursement in order to be placed on the list. This would have excluded any taxpayers that were found to be liable for use tax due, or those that had failed to properly report their taxable sales.

3. **Delinquent taxes are already a matter of public record.** Proponents note that these lists aren't violating privacy laws because tax delinquencies are already a matter of public record, through the filing of tax liens in the county recorder's offices.
4. **Public disclosure of tax delinquencies is gaining interest.** The state of Connecticut was the first state to begin a public listing of delinquent taxpayers. Its program began in January 1997. Since then, at least 12 other states began publicly disclosing the names of their top tax delinquents. These states include Georgia, Maryland, Colorado, Rhode Island, Washington, Indiana, Louisiana, North Carolina, South Carolina, Minnesota, New Jersey and Pennsylvania.

COST ESTIMATE

Administrative costs would be incurred in identifying and maintaining affected accounts, issuing notices by certified mail with return receipt, and arranging for the public record. These costs are estimated to be \$89,000 for fiscal year 2006/07, and \$104,000 ongoing costs for 2007/08 and thereafter.

REVENUE ESTIMATE

It is anticipated that enactment of this measure will provide an inducement for taxpayers to come forward and settle their accounts with the Board, thereby increasing state and local tax revenues. The sales and use tax program's accounts receivable balance is approximately \$675 million. Currently, the top 250 tax delinquents that meet the conditions of the proposed statute owe, in the aggregate, approximately \$300 million. Based on a study conducted by the Franchise Tax Board on the percentages of collectibility by other states with similar automated collection systems, if we assume we would collect an additional 4% of the delinquent amounts, this measure would increase sales and use tax revenues by about \$12 million annually.

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| Analysis prepared by: | Sheila T. Waters | 916-445-6579 | 08/14/06 |
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| Contact: | Margaret S. Shedd | 916-322-2376 |
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